

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

IN RE: A.C. C.

Charles E. Chapman and Margaret L. Chapman, Parents/Co-Guardians  
of Alexander C. Chapman ("A.C.C." or "Alex"); Alexander C. Chapman Plaintiffs

V. Civil Action: 1:17-CV-0075-HSO-JCG

RevClaims, LLC, a Mississippi LLC Entity;  
Memorial Hospital at Gulfport ("MHG"), a Mississippi Entity;  
United Health Care Services, Inc. ("UHC") and OPTUM (Putative Assignees of  
Putative Claims of the Welfare Plan Committee of Lowe's Companies, Inc.  
and/or Lowe's); Lowe's Welfare Plan and JOHN DOES 1 - 5 Defendants

**Motion to Remand**

Plaintiffs, pursuant to law, *inter alia*, **28 U.S.C. §§ 1441, 1446-7** and **L.U.Civ.R. 5(b)**,  
move to remand this case to Harrison Co., MS Chancery Court for good cause shown here and in  
the Plaintiffs' accompanying **Memorandum**, *inter alia*, the following:

1. Defendants fatally failed to comply with **28 U.S.C. §§ 1441-7** and **L.U.Civ.R. 5(b)** and  
Defendants failed to complete *removal* in the prescribed 30 days' [and 14-days'] time:

[A] Defendants failed to duly, **timely file joinders [consents]** in removal of **all** Defendants  
in the time prescribed. Further,

[B] Defendants failed to duly, timely comply with this Court's Local Rules, *inter alia*, **L. U.  
Civ. Rule 5 (b) Removals: Required Filing of the Entire State Court Record**, *to-wit*: a)  
Defendants failed to duly, timely "**file as an exhibit** to its Notice of Removal a copy of **the entire  
state court record** in the format required by the Administrative Procedures for Electronic Case  
Filing for the district to which it is removed," per **L.U.Civ.R. 5(b)**, and b) Defendants failed to timely  
"obtain and electronically **file the complete copy** in the format required...no later than **fourteen  
days** from the date of removal." **L.U.Civ. R. 5 (b)**. As shown here, c) Defendants' purported "copy  
of the state court record" (Doc. 2)] does not comply with the true, correct **State Court Record** that  
was available to the Defendants on 3-15-2017-date of *Notice of Removal* and/or on the 3-29-17  
[**14 day**-bar date of **L.U.Civ.R. 5(b)**]. Defendants fatally omitted a true, complete copy of the **full**

state court record, per §§ 1441-7 and L.U.Civ.R.5(b), as shown in attached, ***Certified Copy of The Chancery Dockets*** for March 15, 2017 and March 29, 2017 [14 day-bar date] (**Exhibit “A” hereto**) evidencing fatal deficiencies in “Defendants’ *partial* record” (Doc. 2). All (A) Summonses and (B) Proofs of Service - omitted from “Defendants’ *partial* record” (Doc. 2) - must be ***filed*** in ***removal*** under 1441 and L.U.Civ.R.5(b) to establish a) ***removal jurisdiction***, and b) ***subject matter jurisdiction*** of the Court, and c) ***in personam jurisdiction*** of all *parties*. Defendants’ failure here is evidenced by **Exhs. “A” hereto**.

2. The *Defendants* bear the ***burden*** of establishing federal jurisdiction over the case, *Jernigan*, 989 F.2d at 815 (5th Cir.1993), and “all doubts about whether federal jurisdiction exists following removal must be resolved against a finding of jurisdiction.” *In re Hot-Head*, 477 F.3d at 323 (5th Cir. 2007). Section 1447(c) provides two bases for remanding cases to state court: (1) ***a defect in the removal procedure***, and (2) the ***lack of subject-matter jurisdiction***. See *Big Country Vein Relief, L.P. v. Directory Assist., Inc.*, 425 F. App’x 289 (5th Cir. 2011) and §1447(c).

3. This Court lacks A) ***removal jurisdiction*** and B) ***subject-matter jurisdiction*** [either on ‘*federal question*’ or ‘*diversity*’ jurisdiction] and D) lacks *prior*, *superior* or *in rem* jurisdiction of the funds or ***Res*** deposited in Chancery by 2/17/17 *Agreed Order*. (Doc. 2, *partial*, ‘state court record’).

4. This Court *cannot interfere with the (prior, superior) probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court*. ***Markham v. Allen***, 326 U.S. at 494 (1946) and ***Marshall v. Marshall***, 547 U.S. 293 (2006). Such applies to *guardianship* matters in a Chancery (“probate”) Court - as here. Contrary to ***Markham*** and ***Marshall***, Defendants’ removal attempt takes all of a Chancery guardianship (‘probate’) case- ***yet***, omitted ***much*** of the state court file: a) Summonses, b) Proofs of Service, and c) the ***Res*** deposited in and held by the Chancery Court. <sup>1</sup>

---

<sup>1</sup>***Bauhaus USA v. Copeland***, 292 F.3d 439 (5<sup>th</sup> Cir. 2002) held: “ In the instant case, the settlement proceeds are ***in the registry*** of the ***Mississippi Chancery Court***. In Great-West, the proceeds of the settlement were placed in a private Special Needs Trust outside the

5. See **Almond v. SRHS**, Order C.A.1:14cv446 (S.D. Miss. 1-15-15): “[A] right or immunity created by the Constitution or laws of the United States **must be an element, and an essential one, of the plaintiff’s cause of action**.” *Id.* at 942 (quoting **Gully v. First Nat’l Bank in Meridian**, 299 U.S. at 112 (1936)). **Almond**, *Id.* [Emphasis added]. Under **Gully’s** “essential element test,” none of Chapmans’ **essential** claims are truly *federal* claims, because, i.e., **First**, Chapmans’ claims for \$110/day **penalties** are only **analogous** claims (*inter alia*, to inform a Chancellor of *analogous* bases for *Equity-relief*, i.e., lack of clean hands, off-sets). **Second**, like Chapmans’ *constitutional claims*, **penalties** are only **contingent**<sup>2</sup> or **alternative** claims, made **if**, and **only if**, Defendants’ purported, erred “ERISA scheme” applies. **Third**, such claims under the **U.S. Constn** are **superfluous** (given Chapmans’ identical, **concurrent**, claims under under **Mississippi’s Constn.**). Such **analogous**, **alternative** and **concurrent** claims are **not** “**an essential element of (Chapmans’) cause of action**” for many good reasons, *inter alia*, a) the Chapmans’ possess and asserted [1] in their *original Amended Complaint* and [2] in their *superceding*, **Second Amended Complaint** only **alternative**, **parallel**, concomitant **State** Law-based claims under *Contract, Takings, Due Process, Clauses of Mississippi’s Constitution*. **Almond**. Also, b) Defendants’ assertion that Defendants’ erred ‘claims’/‘defenses’ allegedly provide “*federal question jurisdiction*” - are no more “essential” to *Chapmans’* claims than *SRHS’* removal claims in **Almond** or in **Gully v. First Nat’l Bank in Meridian**, 299 U.S. at 112 (1936).

---

possession and control of the plan beneficiary. Nevertheless, the defendants in this case, like the Knudsons in *Great-West*, are **not in possession of the disputed funds**, a fact that Justice Scalia found extremely important in *Great-West*. The Court in *Great-West* characterized the suit in that case as “[a] claim for money due and owing under a contract” and that such a suit is “quintessentially an action at law.”[36] Because the facts in today’s case are, in principle, indistinguishable from those in *Great-West*, we are bound by that decision and hold that § 502(a)(3) **does not authorize Bauhaus’ suit**. **III.** For reasons stated above, we affirm the district court’s dismissal of this suit for lack of federal jurisdiction because ERISA does not authorize this suit. Consequently, we do not reach the parties’ preemption arguments. **AFFIRMED.** **Bauhaus**, *Id.* [Emphasis Added].

<sup>2</sup> See **Howard v. Burns**, No. 15-10952 (5th Cir. April 5, 2016).

6. The Chancery Court has **prior, superior, concurrent** jurisdiction of all matters here. Thus, this Court must **decline** jurisdiction under Peacock v. Thomas, 516 U.S. 349 (1996), **Comity, Abstention** and **Prior Jurisdiction** principles requiring This Court to honor **prior, superior, concurrent** jurisdiction of said Chancery Court. See Burford, 319 U.S. 315 (1943); Younger, 401 U.S. 37 (1971); Huffman, 420 U.S. 592 (1975); Colorado River, 424 US 800 (1976) and like cases. See Chapmans' **Memorandum** filed herewith. Also, **Remand** is also due as *Defendants'* alleged 'claims and defenses' are barred by A) **procedural** and B) **substantive law**. See **Memorandum**.

WHEREFORE, considering all here and in *Pls.'* **Second Amended Complaint** (R. 2) and *Exhibits* and accompanying **Memorandum** and **Exhibits**, the Chapmans **move for remand** to said Chancery Court, and for "costs and expenses, including attorney fees (and lost interest) incurred as a result of the removal." 28 U.S.C.1447(c). *Alternatively*, if **not** remanded, they move, per **29 U.S.C. §1132(d)** and Crosby v. La. Health Serv. and Indem. Co., 647 F.3d 258 (5th Cir. 2011), for **[A] Discovery, inter alia, Ex. 'F' to Memorandum** filed herewith, to secure and review (a) "**The Plan**" and (b) all *other missing Plan documents* needed to duly determine all issues, *inter alia*, **jurisdiction**, and, for **[B] time** for Discovery and **[C] time** to respond to Defs' *motions* (i.e., Doc. 3).

Respectfully submitted, this the 4<sup>th</sup> day of April, 2017.

Charles E. Chapman and Margaret L. Chapman, Parents/Co-Guardians of  
Alexander C. Chapman ("A.C.C." or "Alex"); Alexander C. Chapman, Plaintiffs

By: /s/ Matt G. Lyons

Matt G. Lyons, Esq. (MS Bar 1743)  
910 Washington Ave.  
Ocean Springs, MS 39564  
Tel: 228- 872-1855  
E-mail: mattglyons@aol.com

John G. Corlew, Esq. (MS Bar # 6526)  
CORLEW, MUNFORD & SMITH, PLLC  
P.O. Box 16807  
Jackson, MS 39236  
Tel: 601-366-1106 -Fax: 601-366-1052  
E-mail: jcorlew@cmslawyers.com

#### Certificate of Service

I certify, on this date, April 4, 2017, that I electronically filed the foregoing with the Clerk of Court, by using the ECF system which sent notification to all counsel of record, i.e.: Jean C. Bertas, 100 Vision Dr., Ste 400, P.O. Box 14167, Jackson, MS 39211; E-mail: jbertas@bakerdonelson.com and Stephen J. Buccola, P. O. Box 12535, Jackson, MS 39236; E-mail: sbuccola@revclaims.com and I served by agreed method, E-mail, the foregoing to the following non-ECF participant: Roland F. Samson, III, Esq., P.O. Box 1417, Gulfport, MS 39502-1417, E-mail: rsamson@splawfirm.com. Counsel for Memorial Hospital at Gulfport.

This 4<sup>th</sup> day of April, 2017.

By: /s/ Matt G. Lyons

Matt G. Lyons (MS Bar #1743)